

*State of Iowa*

# **Iowa**

# **Administrative**

# **Code**

# **Supplement**

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

# INSTRUCTIONS

## FOR UPDATING THE

### IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

#### **Agriculture and Land Stewardship Department[21]**

Replace Chapter 91

#### **Professional Licensure Division[645]**

Replace Analysis

Replace Chapter 262

Replace Chapter 265

#### **Medicine Board[653]**

Replace Analysis

Replace Chapters 22 and 23

#### **Voter Registration Commission[821]**

Replace Analysis

Replace Reserved Chapter 7 with Chapter 7



CHAPTER 91  
LICENSED GRAIN DEALERS  
[Prior to 7/30/86, Commerce Commission [250], Ch 13]  
[Prior to 7/27/88, 21—Ch 61]

**21—91.1(203) Application of rules.** These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.

**21—91.2(203) Definitions.** For this chapter, the following definitions apply:

*“Bureau”* means the grain warehouse bureau of the department of agriculture and land stewardship.

*“Department”* means the Iowa department of agriculture and land stewardship.

*“Generally accepted accounting principles”* means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

*“Indemnity fund”* means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

*“Licensee”* means a licensed grain dealer.

*“Person”* means the same as defined in Iowa Code section 4.1.

*“Provider”* means a person approved by the department to maintain a secure electronic central filing system of electronic grain contract records.

*“Provider agreement”* means an agreement regarding electronic grain contracts which is entered into between the department and a provider.

*“Received”* means the earliest of the following:

1. The date a state warehouse examiner acknowledges receipt.
2. The date stamped “received” in the grain warehouse bureau.
3. The date postmarked, if the item is properly addressed, to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

*“USDA”* means the United States Department of Agriculture and its divisions and agencies, including, but not limited to, the Farm Service Agency.

*“USDA Provider Agreement”* means the agreement entered into between the USDA and a provider and which is printed on USDA Form WA-490 and any addenda thereto.

*“User agreement”* means an agreement regarding electronic grain contracts which is entered into between a provider and a licensee.

[ARC 7553B, IAB 2/11/09, effective 3/18/09; ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.3(203,203D) Application for a grain dealer license.** Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The application, financial statement, license fee, indemnity fund fee and background information on a person applying for a license and on the managers shall be on file before a license is issued.

This rule is intended to implement Iowa Code sections 203.3, 203.5, 203D.3 and 203D.3A.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.4(203) Grain dealer license not transferable.** A grain dealer license is not transferable between different legal entities. A grain dealer license may be amended to cover a name change of the same legal

entity. The licensee shall give the bureau notice of a proposed name change. The bureau shall confirm the name change with the secretary of state or other governmental agency prior to amending the license.

This rule is intended to implement Iowa Code section 203.7.

**21—91.5(203) Posting of license.** The grain dealer license certificate shall be posted at all times in a conspicuous location in the office or place of business of the grain dealer. A license certificate shall be posted in each location where grain is purchased or delivered.

This rule is intended to implement Iowa Code section 203.7.

[ARC 7553B, IAB 2/11/09, effective 3/18/09]

**21—91.6(203) Surrender of license.** The grain dealer license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, suspension, or revocation of such license. A grain dealer's letter requesting cancellation of the grain dealer license shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.7(203) Renewal, expiration and reinstatement of license—payment of license and indemnity fund fees.**

**91.7(1) Renewals.** The bureau shall send to each licensed grain dealer written notice that the application, the license fee and the indemnity fund fee for annual renewal of the grain dealer license shall be received in accordance with Iowa Code section 203.5. If the bureau does not receive the application and fees by the due date, the license shall expire. A license that has expired may be reinstated within 30 days of the date of expiration conditioned on the applicant's meeting all statutory requirements and the bureau's receipt of the following within 30 days of the expiration:

- a. Completed application;
- b. License and indemnity fund fees; and
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

**91.7(2) Fees for license periods of less than one year shall be prorated on a month-to-month basis.** Fees for license periods of less than one year shall be applicable only under the following circumstances:

- a. When an application for a new license is filed; or
- b. When the fiscal year end of a license holder is changed.

This rule is intended to implement Iowa Code sections 203.5 and 203.6.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.8(203) Financial statements.**

**91.8(1) New license applicants.** To obtain a grain dealer license, an applicant shall submit a financial statement that shall:

- a. Be prepared within three months from the date of filing and comply with subrule 91.8(2), paragraph "a" or "b"; or
- b. Be prepared as of the applicant's usual fiscal year and comply with subrule 91.8(2), paragraph "a" or "b," and the applicant has continuously been in business for one year or more and the applicant has submitted any additional financial information required by the bureau; or
- c. Be a forecasted financial statement prepared by a certified public accountant licensed in this state and the applicant is a new business entity that is in the process of transferring funds into the business entity. An applicant who files a forecasted financial statement pursuant to this paragraph shall file a financial statement which complies with subrule 91.8(2), paragraph "a" or "b," within one month after the date the license is issued by the bureau.

**91.8(2) Financial statement requirements.** Financial statements filed pursuant to subrules 91.8(1), 91.8(3), 91.8(4) and 91.8(11) shall be prepared in accordance with generally accepted accounting principles and shall comply with either of the following:

- a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable

by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau; or

*b.* Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**91.8(3) *Sole proprietorship financial statements.*** An individual licensed as a sole proprietorship shall file a financial statement which conforms with the provisions of subrules 91.8(2) and 91.8(4) on the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 91.8(2) and 91.8(4). The personal statement of financial condition shall also disclose the historical cost basis for assets as provided in Iowa Code section 203.3.

**91.8(4) *Filing date of annual statements.*** Every licensee shall prepare financial statements at the close of the licensee's designated fiscal year and shall file the statements and the bureau's financial information form with the bureau not later than three months thereafter. These financial statements shall be prepared in accordance with generally accepted accounting principles and shall consist, at a minimum, of a balance sheet, statement of income, statement of cash flow, and accompanying notes to the financial statements. The bureau shall notify every licensee during the month after the close of the licensee's fiscal year that the licensee's financial statements are due three months from the close of the licensee's fiscal year.

**91.8(5) *Additional disclosures required in the financial statements.*** Unless the following information is disclosed in the fiscal year end financial statements, the licensee's certified public accountant shall file with the financial statements a separate letter disclosing the information:

*a.* A reconciliation of differences in the grain obligations as shown in the financial statement and the daily position record.

*b.* Amount and kind of grain on collateral warehouse receipts.

*c.* Amount and kind of company-owned grain which is being stored in unlicensed facilities or which has been transferred to another warehouse.

*d.* Bushel and dollar amounts of all outstanding grain payables, including a breakdown of the bushels and dollars of each type of credit-sale contract.

*e.* Gross grain sales for the fiscal year.

*f.* Gross nongrain sales for the fiscal year.

*g.* Cost of all goods sold for the fiscal year.

*h.* Depreciation expense for the fiscal year.

*i.* Interest expense for the fiscal year.

*j.* Number of bushels of grain purchased under each grain dealer's license. For purposes of this paragraph, "purchases" shall mean all grain to which the grain dealer has obtained title during the grain dealer's fiscal year.

**91.8(6) *Filing extension.***

*a.* An extension of one month may be granted by the bureau chief for the filing of financial statements upon receipt of the following:

(1) A letter from the grain dealer's certified public accountant stating the reason for filing the extension request and that work has been done on preparing the financial statements.

(2) An affidavit from the grain dealer stating that the grain dealer meets the financial responsibility requirements of Iowa Code sections 203.3 and 203.15, or that the licensee shall file additional bond in an amount to cover any net worth or current ratio deficiency as provided in Iowa Code sections 203.3 and 203.15, based upon the licensee's certified public accountant's best estimate of the licensee's financial position.

*b.* Grain dealers who file false affidavits under this rule may be prosecuted under Iowa Code section 203.11. Subrule 91.8(6) does not apply to the filing of financial statements required under the provisions of subrules 91.8(10), 91.8(11) and 91.8(12).

**91.8(7) *Asset valuation.*** The licensee may submit to the bureau a written request for asset valuation. The written request shall be accompanied by the appraisal and shall have been prepared by a licensed appraiser in this state and shall list the appraiser's credentials. Before an appraisal will be accepted by the bureau, the licensee shall show a positive net worth. All appraisals are subject to approval by the bureau

chief. The bureau chief shall notify the licensee within five working days if the appraisal is unacceptable. Any approved asset valuation may be used in any financial statements prepared by or for the licensee in accordance with subrule 91.8(2).

**91.8(8) Appraisals.** Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee's ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements. The bureau shall not allow an appraisal to be used to determine the percentage of total liabilities to total assets as it relates to subrule 91.17(2), paragraph "e," concerning the suspension of a licensee's authorization to use credit-sale contracts. All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

- a. Buildings and attached equipment—15 years.
- b. Rolling stock (trucks)—5 years.
- c. Equipment—5 years.

**91.8(9) Assets allowed in meeting financial requirements.**

a. *Corporations, limited liability companies and partnerships.* When the bureau determines the net worth, current assets to current liabilities ratio and total debts to total assets ratio requirements for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the bureau sufficient documentation to assure the bureau that the assets are collectible. If assets are classified as current in the financial statements, the documentation shall also assure that the assets are collectible within one year.

b. *Sole proprietors.* When the bureau determines the net worth and current assets to current liabilities ratio requirements for sole proprietors, related party assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be included. Only that part of the value of an asset which is subject to execution shall be allowed by the bureau in determining net worth and current assets to current liabilities ratio requirements. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the bureau), such excess shall be shown as a liability with appropriate footnotes to the financial statement. An applicant or a licensed warehouse operator shall complete the bureau's financial information form regarding this matter and submit the form with the financial statements.

**91.8(10) Net worth and current ratio deficiency monthly financial statements.** Every licensee who has a net worth or current ratio deficiency and who has filed additional bond shall file monthly financial statements with the bureau by the end of the next month until the licensee's net worth or current ratio meets the requirements of Iowa Code section 203.3 for a minimum of three consecutive months. These financial statements shall contain a minimum of a balance sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

**91.8(11) Good cause financial statement.** The bureau chief may require a licensee to file a financial statement which complies with paragraph 91.8(2) "b" within 45 days of notification by the bureau if one of the following conditions exists:

- a. Payment is made by use of a check or electronic funds transfer and a financial institution refuses payment because of insufficient moneys in the licensee's account;
- b. Evidence of licensee requesting or delaying payment for grain without the use of a credit-sale contract for grain;
- c. Other documented evidence which indicates that the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement;
- d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in Iowa Code section 203.22; or
- e. Record-keeping violations.



**91.8(12) Additional information.** The bureau chief may require an applicant or licensee to provide the bureau with any other information reasonably related to the business of a grain dealer and work papers supporting the financial statements.

**91.8(13) Penalty for failure to timely supply financial statements.** The department may suspend the license of any grain dealer who fails to provide the required financial statements within the time limits prescribed by these rules.

This rule is intended to implement Iowa Code sections 203.1, 203.2, 203.3, 203.6, and 203.15.  
[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.9(203) Bonds and irrevocable letters of credit.** Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit issued to the bureau shall be on the form prescribed by the bureau. Bonds and irrevocable letters of credit shall be written so as to provide funds to protect producers who have sold grain to the licensed grain dealer.

**91.9(1) Deficiency bond or irrevocable letter of credit.** When the net worth or current ratio of a licensee is less than that required by Iowa Code section 203.3, the grain dealer may file a bond or an irrevocable letter of credit with the bureau to cover the deficiency as provided by and within the time prescribed in Iowa Code section 203.3. Bonds filed with the bureau shall be on the form prescribed and furnished by the bureau. Irrevocable letters of credit shall be on the form prescribed by the bureau. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect producers who have sold grain to the licensed grain dealer. Unless the licensee files the bond or irrevocable letter of credit within the prescribed time period, the grain dealer license shall be suspended. The licensee's failure to provide the bond or irrevocable letter of credit within ten days of suspension shall cause the license to be revoked.

**91.9(2) Time period to correct deficiency.** If a grain dealer has current assets equal to less than 50 percent of current liabilities and files a deficiency bond or irrevocable letter of credit as provided in Iowa Code section 203.3(5) within the 30-day period after the notice by the bureau, the grain dealer shall correct the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within 30 days after the filing of the deficiency bond or irrevocable letter of credit. Failure to cure the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within the 30 days shall cause the license to be suspended.

**91.9(3) Replacement bond or irrevocable letter of credit.** The bureau shall send written notice to the licensee notifying the licensee that the bond or irrevocable letter of credit shall be canceled on the date specified by the surety or issuer in its notice to the bureau. The bureau shall send a written notice and information and forms for filing the required replacement bond or irrevocable letter of credit. Replacement bond or irrevocable letter of credit shall be on file with the bureau prior to the time of cancellation of the bond or irrevocable letter of credit. The department shall suspend any grain dealer license from the time the grain dealer's bond or irrevocable letter of credit is canceled until the replacement bond or irrevocable letter of credit is on file with the department. Unless the bond or irrevocable letter of credit is no longer necessary, the department shall revoke the grain dealer's license if a replacement bond or irrevocable letter of credit is not received from the licensee within 30 days of suspension of the license.

**91.9(4) Cancellation of the bond or irrevocable letter of credit.** The issuer shall send a cancellation notice to the bureau by certified mail. The notice shall be in accordance with the provisions stated in the bond or irrevocable letter of credit. The time period for notice of cancellation stated in the bond or irrevocable letter of credit commences on the date when the bureau receives the notice. The bureau shall send written acknowledgment of notice of the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

This rule is intended to implement Iowa Code sections 203.3 and 203.4.

**21—91.10(203) Payment.** Payment for grain shall be made as provided by Iowa Code section 203.8. When a dealer has failed to make payment on demand of the seller and the failure has come to the attention of the bureau, the bureau chief shall request the dealer to make payment within 24 hours. The

request may be made verbally and confirmed by ordinary mail. The bureau chief may require the dealer to make payment with a cashier's check or money order if there is any evidence of financial instability. Absent a dispute between buyer and seller, the license may be suspended if the dealer fails to make timely payment as requested by the bureau chief. An insufficient funds check or failed electronic funds transfer shall not constitute payment under this rule.

This rule is intended to implement Iowa Code sections 203.2 and 203.8.

**21—91.11(203) Books and records.**

**91.11(1) *General records.*** A grain dealer shall maintain complete and sufficient records to show all purchases, sales, and payments for grain purchased.

**91.11(2) *Daily position record.*** Unless otherwise approved by the bureau, every grain dealer shall keep and maintain on a daily basis a grain position record on a form approved by the bureau. The daily position record shall summarize one month's activity in a format approved by the bureau. The daily position record shall indicate at least the increases and decreases and ending balances on a daily basis for unpaid company-owned. The daily position record shall reflect the obligations in the appropriate columns.

A separate daily position record shall be maintained for each kind and class of grain and each type of commodity that is identity-preserved. All daily entries to the daily position record shall reflect transactions made through that day's close of business unless another time of day is elected by the licensee and applied by the licensee on a consistent basis.

**91.11(3) *Inspection.*** For the purpose of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All financial records, grain records and payment records shall be available for inspection by the bureau during ordinary business hours, and any other time specified by the bureau in writing. All records shall be made available within the state of Iowa upon request. Unless the bureau has been notified that the records would not be available for inspection, an examination fee may be assessed to the grain dealer if an examiner arrives at the licensee's location and the records are not available for inspection.

**91.11(4) *Settlement sheets.*** Unless the grain dealer utilizes a computer system which sequentially numbers settlement sheets as generated, every grain dealer shall have prenumbered settlement sheets. All settlement sheets shall show, at a minimum, the following:

- a. The grain dealer's name and address;
- b. Seller's name and address;
- c. Date of deliveries;
- d. Scale ticket numbers;
- e. Amount, kind and grade factors of the grain; and
- f. Method of settlement:
  - (1) If priced, the price per bushel, the quantity of grain priced and the date of pricing.
  - (2) If paid for, the date, price per bushel, the quantity of grain paid for, the amount of payment and check number or electronic funds transfer number.
  - (3) If credit-sale contract, the contract type, date and number and the quantity of grain transferred to the contract.
  - (4) If warehouse receipt, the receipt number, date and quantity of grain transferred to the receipt.
  - (5) If removed from the warehouse, the delivery document numbers, dates and amounts of the shipments.

Copies of all settlement sheets shall be maintained in alphabetical or numerical order by the dealer as part of the records, unless the dealer uses a computer system approved in writing by the bureau which sequentially numbers and prints settlement sheets and the settlement sheets can be retrieved on and reprinted by the computer system. A copy of the settlement sheet shall be given to the seller upon demand, upon payment or upon the issuance of a credit-sale contract. Any settlement sheet used in the pricing of grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such settlement sheet. Deliveries and settlement transactions shall be posted to the settlement sheet on

a daily basis unless a computer system is utilized which can generate a scale ticket summary sheet for each depositor.

**91.11(5) *Scale tickets.*** If the dealer has a scale or regular access to a scale which can be used for weighing grain, the dealer shall use prenumbered scale tickets showing, at a minimum, the following:

- a. Date.
- b. The dealer's name and location.
- c. Seller's name.
- d. Gross weight, tare weight, and delivered weight.
- e. Type of product or commodity.
- f. An indication of whether the commodity is being received or loaded out.

One copy of each ticket shall be maintained in numerical order, unless the grain dealer uses a computer system approved in writing by the warehouse bureau which sequentially numbers and prints scale tickets and the scale ticket information and can be retrieved on and reprinted by the computer system. However, a ticket printed at the time of weighing shall be the document of record. All copies of reprinted scale tickets shall be marked "duplicate." All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. The licensee shall be responsible for providing a list of all scale tickets used at each location. Any scale ticket used in pricing grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such ticket if priced at the time of delivery. If the dealer does not have a scale or regular access to a scale and purchases grain by having the grain custom weighed at various locations or at destination, the dealer shall maintain one copy of the scale ticket in daily order as part of the grain records.

**91.11(6) *Direct shipment records.*** When grain is delivered by a producer or the producer's agent to a third party in accordance with an agreement between the producer and the grain dealer and the grain is weighed at the destination or is custom weighed, the direct shipment is to be considered an obligation of the grain dealer on the date stated on the destination scale ticket, and the direct shipment shall be reflected in the daily position record on the date when the grain dealer is able to obtain the load weights. A grain dealer who also holds a warehouse operator license may maintain a separate daily position record for each kind of direct shipment grain. The grain dealer shall notify the bureau in writing if the grain dealer elects to maintain such a daily position record.

**91.11(7) *Credit-sale contracts.*** One copy of every outstanding credit-sale contract shall be maintained in numerical order as part of the records.

- a. Required content. A credit-sale contract shall contain a minimum of the following:
  - (1) Buyer's name and location;
  - (2) Seller's name and address;
  - (3) The conditions of delivery;
  - (4) Amount and kind of grain delivered;
  - (5) Price per bushel or basis of value;
  - (6) The date payment is to be made;
  - (7) The duration of the credit-sale contract, which shall not exceed 12 months from the date the contract is executed;
  - (8) The wording "Credit-Sale Contract," which shall appear in the title or subtitle of the contract;
  - (9) Consecutive numbering at the time of printing; and
  - (10) Signature and date by both parties.

- b. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under a credit-sale contract. The acknowledgment shall comply with one of the following:

(1) Be a separate form, which shall be prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the grain dealer's copy and seller's copy of the credit-sale contract; or

(2) The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund"; or

(3) The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned acknowledge that the seller has received notice that this credit-sale transaction is not protected by the grain depositors and sellers indemnity fund."

c. If someone other than the seller indicated on a credit-sale contract signs the contract, the grain dealer shall be able to provide the bureau with proof of business relationship between the indicated seller and the person who signed the contract. This document shall be signed by the person who produced the grain or caused the grain to be produced. The document is required for but not limited to contracts signed by the following:

- (1) Landlord or tenant.
- (2) Parent or child.
- (3) Spouse.
- (4) Siblings.
- (5) Farm managers (may use a copy of the management agreement).
- (6) Executors, trustees, administrators, etc. (may use a copy of court document of appointment).
- (7) Corporate officers (other than the president), partners and members or officers of other legal entities.

If a contract is issued to two or more sellers, all must sign the contract.

d. A licensee's purchases of grain by credit-sale contract from a person licensed as a grain dealer in any jurisdiction are not subject to the requirements of 91.11(7). Any grain purchased from a grain dealer is not eligible for recovery from the grain depositors and sellers indemnity fund.

**91.11(8) *Cancellation procedures for credit-sale contracts.***

a. One copy of each canceled credit-sale contract shall be maintained in separate numerical order from the outstanding credit-sale contracts as part of the records. The grain dealer shall either mark the face of the credit-sale contract with the word "Canceled," the check number, and date of payment or shall provide a numerically ordered listing that shows the contract numbers, check numbers and payment dates. Credit-sale contracts may only be marked "void" if errors are made on the day of issue; otherwise they are to be considered "canceled."

b. Partial payments. Advances and partial payments shall be noted on the face of the outstanding credit-sale contracts or by other method of documentation that shows the net balance and is approved by the bureau. The following information shall be noted:

- (1) Amount of bushels paid;
- (2) Date paid;
- (3) Check number; and
- (4) Remaining balance of the contract.

**91.11(9) *Retention of records.*** All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.15, 203D.1, 203D.3 and 203D.6.

[ARC 9388B, IAB 2/23/11, effective 3/30/11; ARC 0538C, IAB 12/26/12, effective 1/30/13]

**21—91.12(203) Assignment of contracts.** Upon cancellation, expiration, suspension or revocation of the license, credit-sale contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the credit-sale contract. The assignee shall notify

all affected producers in writing of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom they are assigned within 30 days of cancellation, expiration, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, expiration, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.  
[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.13(203) Filing of monthly grain statement and reports.** A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. The grain statement shall be on a form or in a format prescribed by the bureau. The bureau shall furnish forms to the dealer upon request. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file other types of reports, and the dealer shall file with the bureau any such report requested by the bureau within the time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.  
[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.14(203) Notice to the warehouse bureau.**

**91.14(1)** The bureau shall be notified in writing prior to:

- a. Change of ownership of the grain dealer.
- b. Change of name or business address of the grain dealer.
- c. Change of the grain dealer's fiscal year end.
- d. The ceasing of operations.

**91.14(2)** The licensee shall notify the bureau within 24 hours after the licensee knows or should have known any of the following:

- a. Licensee's net worth falling below the amount required by Iowa Code section 203.3 and if the amount of the deficiency is not covered by a net worth deficiency bond.
- b. Licensee's current assets falling below the amount required by Iowa Code section 203.3 and the deficiency is not covered by a current ratio deficiency bond.
- c. Class 2 licensee's grain purchases from producers exceed \$500,000 during the licensee's fiscal year.

**91.14(3)** The licensee shall notify the bureau in writing within ten days after the licensee knows or should have known either of the following:

- a. Change in management.
- b. The death of an individual or member of a partnership licensed as a grain dealer.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

**21—91.15(203) Shrinkage due to moisture.** A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain; or to compensate for losses to be incurred during the handling, processing, or storage of the grain shall do so in accordance with the provisions of Iowa Code section 203.20.

This rule is intended to implement Iowa Code section 203.20.

**21—91.16(203) Requirements for Class 2 licensees.** A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the bureau within 30 days after the purchases exceed \$500,000.

This rule is intended to implement Iowa Code section 203.3.  
[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.17(203) Requirements for licensees authorized to issue credit-sale contracts.**

**91.17(1) Financial statements—audit or bond or irrevocable letter of credit.** A grain dealer shall not purchase grain by a credit-sale contract until the licensee complies with paragraph "a" or "b." If the

grain dealer elects to be authorized to issue credit-sale contracts under paragraph “b,” the grain dealer shall also comply with rule 21—91.8(203).

a. Financial statements filed pursuant to this rule shall be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau. A sole proprietor who desires to be authorized to issue credit-sale contracts shall file a financial statement on the proprietorship business which is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state, and shall file a personal financial statement which conforms with the provisions of subrule 91.8(3).

b. The grain dealer bond or irrevocable letter of credit filed pursuant to this rule shall be in the amount of \$100,000 payable to the department. Bonds or irrevocable letters of credit shall be on the forms prescribed and furnished by the bureau.

**91.17(2) Credit-sale contract net worth requirements.** When the grain dealer’s net worth falls below the amount required by Iowa Code section 203.15(4), the grain dealer shall immediately cease purchasing grain by credit-sale contract. Failure to cease purchasing grain by credit-sale contract shall result in the suspension of the grain dealer license. Bonds or irrevocable letters of credit filed to correct the deficiency shall be on the forms prescribed and furnished by the bureau. The procedure for the filing of a deficiency bond or irrevocable letter of credit shall be the same as set forth in Iowa Code section 203.3. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect sellers who have sold grain by means of a credit-sale contract to the licensed grain dealer. Advances to sellers on grain purchased by credit-sale contract will be considered when the 50 cents per bushel net worth requirement is calculated. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advance.

**91.17(3) Suspension of authorization to issue credit-sale contracts.** The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse operator license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator’s obligation based on an examination by the department or the United States Department of Agriculture.

b. Collateral receipts cannot be issued for grain represented by credit-sale contract except for the percentage of bushels paid for through advances to sellers on grain purchased by credit-sale contract. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advances.

c. A grain dealer shall not purchase grain on credit-sale contracts during any time period in which the grain dealer’s current assets are less than 100 percent of current liabilities, or in which the grain dealer’s net worth is less than \$75,000.

d. The grain dealer violates Iowa Code section 203.15.

e. The grain dealer’s total liabilities are greater than 75 percent of the grain dealer’s total assets. The valuation of fixed assets as stated by an approved appraisal on file with the bureau pursuant to subrule 91.8(8) will not be used to determine this percentage.

f. The grain dealer has made payment by use of an electronic funds transfer or a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the electronic funds transfer or on the financial instrument because of insufficient funds in a grain dealer’s account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to Iowa Code section 203.9.

This rule is intended to implement Iowa Code section 203.15.

**21—91.18(203) Department of agriculture and land stewardship enforcement procedures.** The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of this chapter. The department recognizes that violations of certain rules may have more serious ramifications; thus, the enforcement of those rules requires stricter policies. The enforcement

policies apply to any violation of this chapter unless enforcement provisions are specifically addressed in a particular rule or subrule.

**91.18(1)** If it is necessary to establish proof of a violation of statute or rule, the bureau shall conduct a special investigation of the licensee. The bureau may contact the licensed grain dealer, the grain dealer's employees, or any other interested party to gain information for the investigation. The bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

- a. Insufficient funds check, or failed electronic funds transfer.
- b. Stalled payment for grain.
- c. Quantity deficiency.
- d. Quality deficiency.
- e. Incomplete or inaccurate records as specified in rule 21—91.11(203).

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, travel and any other additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

**91.18(2)** Upon establishment by the bureau of a violation of statute or rule, the bureau shall notify the licensee in writing that the licensee must be in compliance with the department's rules within a period of time to be established by the bureau. The bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

- a. Likelihood of producer loss;
- b. Gravity of the offense; and
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rules.

**91.18(3)** The bureau chief may initiate license suspension or revocation proceedings against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the suspension or revocation proceedings:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

**91.18(4)** The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to file charges:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

**91.18(5)** The bureau chief may initiate the assessment of civil penalties against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the assessment of civil penalties:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.10, 203.11 and 203.11A.

**21—91.19(203) Review proceedings.** A grain dealer licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests the finding or decision of the bureau

chief. Any such complaint shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

**21—91.20(203) Prioritization of inspections of grain dealers.** Licensees with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in an 18-month period.

This rule is intended to implement Iowa Code section 203.22.

**21—91.21(203) Claims against credit-sale contract bond.**

**91.21(1) *Persons who may file claims—time of filing.*** These rules are applicable only in those instances where a bond has been filed to satisfy Iowa Code section 203.15. If a bond is on file with the department, a seller may file a claim with the bureau for satisfaction of a loss under the grain dealer's bond. A claim shall not be filed prior to the incurrence date, which is the earlier of the following:

- a. The revocation, termination, or cancellation of the license of the grain dealer; or
- b. The filing of a petition in bankruptcy by a grain dealer.

To be timely, a claim shall be filed within 120 days of the incurrence date.

**91.21(2) *Notice.*** The bureau shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the bond on account of the licensee shall be received by the bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

**91.21(3) *Determination of eligible claims.*** The bureau shall determine a claim to be eligible for payment if the bureau finds all of the following:

- a. The claim was timely filed;
- b. The claimant qualifies as a credit-sale contract seller;
- c. A claim derives from a credit-sale contract transaction, if the claimant is a seller who delivered and transferred title of the grain to the grain dealer by credit-sale contract; and
- d. There is adequate documentation to establish the existence of a credit-sale contract claim and to determine the amount of the loss.

**91.21(4) *Value of loss—credit-sale contract claims.*** The dollar value of a credit-sale contract claim incurred by a seller who has sold and delivered grain and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of sale. If the sold grain was unpriced, the value of the claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, that is being paid to producers for grain by the grain terminal operator or grain processor nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the bureau may choose between the two. However, the bureau may accept an alternative valuation of a claim upon a showing of just cause by the seller. All sellers filing claims under this rule shall be bound by the value determined by the bureau. The value of the loss is the outstanding balance on the validated claim at the time of payment.

**91.21(5) *Procedure—appeal.*** The bureau shall provide for notice to each credit-sale contract seller upon the bureau's determination of eligibility and value of loss. Within 20 days of the notice, the credit-sale contract seller may file a petition for hearing for review of either determination with the district court in the county in which the credit-sale contract seller resides, or in Polk County.

**91.21(6) *Payment of claims.*** Upon a determination of the status of all credit-sale contract claims, and after the filing period has run, the bureau shall provide a report to all valid, timely filed credit-sale contract claimants. If there are no appeals filed pursuant to subrule 91.21(5), the bureau shall make



payment either in full or pro rata, in the event the value of the credit-sale contract claims is greater than the amount of the bonds.

This rule is intended to implement Iowa Code section 203.15.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.22(203) Electronic grain contracts.** Subject to the provisions of this chapter, a licensee may issue electronic grain contracts using its own computer system or may contract with an independent provider to issue electronic grain contracts. If the licensee contracts with an independent provider, rules 21—91.22(203) through 21—91.26(203) shall apply. If the licensee issues electronic grain contracts using its own computer system, rules 21—91.22(203), 21—91.25(203) and 21—91.26(203) shall apply.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.

[ARC 7553B, IAB 2/11/09, effective 3/18/09]

**21—91.23(203) Electronic grain contract providers and provider agreements.** A provider shall be independent of any outside influence or bias in action or appearance. A provider shall enter into a provider agreement with the department prior to being approved by the department. A provider shall issue and maintain electronic grain contracts only on behalf of licensees who contract with the provider for those services. The provider agreement shall be subject to, but not be limited to, the provisions of subrules 91.23(1) through 91.23(7).

**91.23(1) Provider to be approved by the USDA.** No provider shall be approved by the department unless the provider is first approved as a provider of “other electronic documents” by the USDA pursuant to the provisions of 7 CFR Part 735. Upon department request, a provider shall provide a copy of the provider’s executed USDA Form WA-490 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing.

**91.23(2) USDA action against providers.** In the event that the USDA shall take action to deny, withdraw, suspend, reinstate or terminate a USDA provider agreement, the department shall automatically take the same action and the provider shall be subject to such action by the department. A provider shall notify the department of any such actions taken by the USDA.

**91.23(3) Notice requirements for providers.**

*a.* When entering into a new user agreement, a provider shall provide written notice to the department.

*b.* All notices to the USDA required by 7 CFR Part 735 and by the USDA provider agreement shall also be served upon the department except as specifically exempted in the provider agreement.

*c.* In the user agreement, a provider shall include a notice to the licensee that the data on the provider’s central filing system is subject to disclosure to the department and the USDA.

**91.23(4) Provisions to cease issuing electronic grain contracts.** Upon notice by the department that a grain dealer license issued under Iowa Code chapter 203 has expired or has been canceled, suspended or revoked, a provider shall prohibit the licensee from entering into any electronic grain contracts until further notice from the department. Upon notice by the department that a licensee has had its right to purchase grain by credit-sale contract suspended or denied under rule 21—91.17(203), a provider shall prohibit the licensee from entering into any electronic credit-sale grain contracts until further notice from the department.

**91.23(5) Department access to electronic grain contract data.** A provider shall allow the department unrestricted access to the central filing system for electronic grain contracts issued on behalf of licensees. The electronic grain contract data shall be maintained for six years after a contract has been canceled. Access shall be made available in a manner that allows interaction with department examinations. Access shall be free of any charge or costs to the department.

**91.23(6) Termination of provider agreement.** The department or provider may terminate the provider agreement upon 60 days’ written notice to the other party. The department shall terminate a provider agreement on less than 60 days’ notice in accordance with subrule 91.23(2). Upon termination of the provider agreement, the provider shall immediately surrender to the department copies of the electronic data and paper records for any electronic grain contracts contained within the central filing system. Such data and paper record copies, however, are limited to electronic grain contracts issued by licensees.

**91.23(7) *Authorization, jurisdiction and liability.*** A provider shall be authorized to transact business in the state of Iowa and shall consent to jurisdiction in the state of Iowa and venue in Polk County, Iowa. A provider shall be liable to the department for costs incurred by the department as a result of action taken in the event of a failure of the central filing system or any inability to provide the access required in subrule 91.23(5).

This rule is intended to implement Iowa Code sections 203.2, 203.15, and 203.17.  
[ARC 7553B, IAB 2/11/09, effective 3/18/09; ARC 9388B, IAB 2/23/11, effective 3/30/11]

**21—91.24(203) Electronic grain contract users and user agreements.** Prior to engaging in the issuance of electronic grain contracts, a licensee shall enter into a user agreement with a provider approved by the department. All electronic grain contracts issued by the licensee shall be issued through and filed in the provider's electronic central filing system. The use of electronic grain contracts is subject to the provisions of subrules 91.23(1) through 91.23(5).

**91.24(1) *Licensee to use only one provider.*** A licensee shall issue electronic grain contracts through only one provider.

**91.24(2) *Changing providers.*** Subject to the provisions of a user agreement in effect, a licensee may change providers once per year. The provider shall follow the transfer terms specified in USDA Form WA-490 and any addenda pursuant to subrule 91.23(1). The licensee shall notify the department of a change in provider.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.  
[ARC 7553B, IAB 2/11/09, effective 3/18/09]

**21—91.25(203) Electronic grain contracts—issuance and form.** Electronic grain contracts shall comply with the provisions of Iowa Code chapters 203 and 554D.

**91.25(1) *Agreement to conduct electronic transactions.*** A licensee or the licensee's provider shall maintain complete and sufficient records to show agreement between the grain seller and the licensee to conduct electronic grain contract transactions. The records shall be presented to the department for inspection upon request. An electronic grain contract shall be capable of being printed or stored by both the licensee and the grain seller.

**91.25(2) *Electronic signatures.*** Sufficient security procedures shall be used by a licensee or the licensee's provider to reasonably ascertain that the electronic grain contract signature is the act of the grain seller. The security procedures shall be subject to the review of and approval by the department. A seller shall be allowed to sign an electronic grain contract only at the conclusion of all electronic grain contract terms and conditions.

**91.25(3) *Numbering of electronic contracts—no duplication.*** Electronic grain contracts shall be consecutively numbered as issued. A licensee shall not at any time have an electronic grain contract and a paper grain contract outstanding for the same lot of grain.

**91.25(4) *Seller power of attorney.*** A licensee or a third party may not handle electronic grain contracts on behalf of a seller unless a written power of attorney to do so has been provided by the seller. Such power of attorney shall be provided to the department for inspection and verification upon the department's request.

**91.25(5) *Issuance, form, cancellation, and assignment of electronic credit-sale contracts.*** The provisions for issuance, cancellation, and assignment of credit-sale contracts found in rules 21—91.11(203) and 21—91.12(203) shall apply to electronic credit-sale contracts except to the extent that the rules are not applicable to paperless credit-sale contracts.

**91.25(6) *Authorization to issue electronic credit-sale contracts.*** A licensee who issues electronic credit-sale contracts shall comply with all requirements of rule 21—91.17(203).

**91.25(7) *Nonexclusive use.*** A licensee shall not be required to issue grain contracts in electronic form.

This rule is intended to implement Iowa Code sections 203.2, 203.15, 203.17, 554D.106, 554D.110 and 554D.111.  
[ARC 7553B, IAB 2/11/09, effective 3/18/09]

**21—91.26(203) Security of a provider's electronic central filing system or a licensee's electronic database.** Only authorized employees of the licensee shall have access to the provider's central filing system or the licensee's electronic database. A provider shall prevent unauthorized persons from gaining access to its central filing system. If a licensee uses its own computer database, the licensee shall maintain a backup of the database to ensure electronic grain contracts are not inadvertently lost.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.

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**PROFESSIONAL LICENSURE DIVISION[645]**

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.  
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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[Prior to 4/17/02, see 645—Chapter 261]

**645—262.1(152B,272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of respiratory care.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Electronically transmitted*” means a program/activity that is videotaped, presented on the Iowa Communications Network (ICN), computer-based or other electronically based means that includes a posttest.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a respiratory care practitioner in the state of Iowa.

**645—262.2(152B,272C) Continuing education requirements.**

**262.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on April 1 of each even-numbered year and ending on March 31 of the next even-numbered year. Each biennium, the licensee shall be required to complete a minimum of 24 hours of continuing education that meet the requirements specified in rule 645—262.3(152B,272C). Fourteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class employing in-person or live, real-time interactive media or by employing an archived audio or video presentation which permits the licensee a means to communicate with the presenter in real time.

**262.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal.

**262.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

**262.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

**262.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—262.3(152B,272C) Standards.**

**262.3(1) General criteria.** A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a.* Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b.* Pertains to subject matters which integrally relate to the practice of the profession;
- c.* Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d.* Fulfills stated program goals, objectives, or both; and
- e.* Provides proof of attendance to licensees in attendance including:
  - (1) Date(s), location, course title, presenter(s);
  - (2) Number of program contact hours; and
  - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

**262.3(2) Specific criteria.** Continuing education hours of credit may be obtained by:

- a.* Programs/activities that shall be of a clinical nature related to the practice of respiratory care. Clinical nature subject matter is described as basic clinical processes that include information beyond the basic licensure requirements applicable to the normal development and use of the clinical respiratory care practitioner. Any communication course must involve the actual application to the practice of the respiratory care practitioner.
- b.* Program presenters who will receive one hour of credit for each hour of presentation for the first offering of the continuing education program/activity.
- c.* Academic coursework that meets the criteria set forth in the rules and is accompanied by an official transcript indicating successful completion of the course. Continuing education credit equivalents are as follows:
  - 1 academic semester hour = 15 continuing education hours
  - 1 academic quarter hour = 10 continuing education hours
- d.* All courses offered by the American Association of Respiratory Care (AARC) continuing education programs/activities.
- e.* Maximums per biennium are as follows:
  - (1) No more than ten hours of approved independent study for continuing education requirements in a given continuing education compliance period.
  - (2) The following are approved for continuing education credit on a one-time basis per biennium and require a certificate of attendance or verification:

CERTIFICATIONS :

Advanced Cardiac Life Support	up to 12 hours
Basic Cardiac Life Support—Instructor	up to 8 hours
Basic Cardiac Life Support	up to 6 hours
Neonatal Resuscitation	up to 9 hours
Pediatric Advanced Life Support	up to 14 hours
Mandatory Reporting	up to 4 hours
Certified Pulmonary Function Technologist	up to 8 hours
Registered Pulmonary Function Technologist	up to 12 hours
Neonatal Pediatric Specialist	up to 12 hours
Sleep Disorders Specialist	up to 12 hours
Adult Critical Care Specialist	up to 12 hours

## RECERTIFICATIONS :

Advanced Cardiac Life Support	up to 4 hours
Basic Cardiac Life Support	up to 2 hours
Neonatal Resuscitation	up to 3 hours
Pediatric Advanced Life Support	up to 3 hours
Registered Respiratory Therapist	up to 24 hours
Certified Pulmonary Function Technologist	up to 8 hours
Registered Pulmonary Function Technologist	up to 12 hours
Neonatal Pediatric Specialist	up to 12 hours
Sleep Disorders Specialist	up to 12 hours
Adult Critical Care Specialist	up to 12 hours
Certified Respiratory Therapist	up to 24 hours

*f.* Unacceptable subject matter includes marketing, personal development, time management, human relations, collective bargaining and tours.

[ARC 9931B, IAB 12/28/11, effective 2/1/12; ARC 0537C, IAB 12/26/12, effective 1/30/13]

**645—262.4(152B,272C) Audit of continuing education report.** Rescinded IAB 12/28/11, effective 2/1/12.

**645—262.5(152B,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

**645—262.6(152B,272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

**262.6(1)** Failure to cooperate with a board audit.

**262.6(2)** Failure to meet the continuing education requirement for licensure.

**262.6(3)** Falsification of information on the license renewal form.

**262.6(4)** Falsification of continuing education information.

**645—262.7(152B,272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver to a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**262.7(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**262.7(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**262.7(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

These rules are intended to implement Iowa Code section 272C.2 and chapter 152B.

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[Filed ARC 0537C (Notice ARC 0221C, IAB 7/25/12), IAB 12/26/12, effective 1/30/13]

CHAPTER 265  
PRACTICE OF RESPIRATORY CARE PRACTITIONERS

**645—265.1(152B,272C) Code of ethics.**

**265.1(1)** The respiratory care practitioner shall practice acceptable methods of treatment and shall not practice beyond the competence or exceed the authority vested in the practitioner by physicians.

**265.1(2)** The respiratory care practitioner shall continually strive to increase and improve knowledge and skill and shall render to each patient the full measure of the practitioner's ability. All services shall be provided with respect for the dignity of the patient, regardless of the patient's social or economic status or personal attributes or the nature of the patient's health problems.

**265.1(3)** The respiratory care practitioner shall be responsible for the competent and efficient performance of assigned duties and shall expose incompetent, illegal or unethical conduct of members of the profession.

**265.1(4)** The respiratory care practitioner shall hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient's physician.

**265.1(5)** The respiratory care practitioner shall not accept gratuities and shall guard against conflict of interest.

**265.1(6)** The respiratory care practitioner shall uphold the dignity and honor of the profession and abide by its ethical principles.

**265.1(7)** The respiratory care practitioner shall have knowledge of existing state and federal laws governing the practice of respiratory therapy and shall comply with those laws.

**265.1(8)** The respiratory care practitioner shall cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

**645—265.2(152B,272C) Intravenous administration.** Starting an intravenous line or administering intravenous medications is not considered a competency within the scope of a licensed respiratory care practitioner. However, this rule does not preclude a licensed respiratory care practitioner from performing intravenous administration under the auspices of the employing agency if formal training is acquired and documented.

**645—265.3(152B,272C) Polysomnography testing.** Rescinded IAB 8/15/07, effective 9/19/07.

**645—265.4(152B,272C) Setup and delivery of respiratory care equipment.**

**265.4(1)** Unlicensed personnel may deliver, set up, and test the operation of respiratory care equipment for a patient but may not perform any type of patient care. Instruction or demonstration of the equipment shall be limited to its mechanical operation (on and off switches, emergency button, cleaning, maintenance). Any instruction or demonstration to the patient regarding the clinical use of the equipment, the fitting of any device to the patient or making any adjustment, or any patient monitoring, patient assessment, or other procedures designed to evaluate the effectiveness of the treatment must be performed by a licensed respiratory therapist or other licensed health care provider allowed by Iowa law.

**265.4(2)** Respiratory care equipment includes but is not limited to:

- a. Positive airway pressure (continuous positive airway pressure and bi-level positive airway pressure) devices and supplies;
- b. Airway clearance devices;
- c. Invasive and noninvasive mechanical ventilation devices and supplies;
- d. Nasotracheal and tracheal suctioning devices and supplies;
- e. Apnea monitors and alarms and supplies;
- f. Tracheostomy care devices and supplies;
- g. Respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry, CO<sub>2</sub> monitoring, and spirometry devices and supplies; and

*h.* Pulse-dose or demand-type oxygen conserving devices or any oxygen delivery systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen.

[ARC 0537C, IAB 12/26/12, effective 1/30/13]

These rules are intended to implement Iowa Code chapters 147, 152B, and 272C.

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## MEDICINE BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the “umbrella” of Public Health Department[641] by 1986 Iowa Acts, ch 1245]  
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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[Prior to 7/19/06, see 653—Chapter 12]

**653—22.1(272C) Mandatory reporting—judgments or settlements.** Each licensee, including a licensee holding an inactive license, shall report to the board every adverse judgment and every settlement of a claim against the licensee in a malpractice action to which the licensee is a party. The report, together with a copy of the judgment or settlement, must be filed with the board within 30 days from the date of said judgment or settlement. Failure to report judgments or settlements in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

**653—22.2(272C) Mandatory reporting—wrongful acts or omissions.**

**22.2(1) Definitions.** For the purposes of this rule, the following definitions apply:

*“Knowledge”* means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

*“Reportable conduct”* means wrongful acts or omissions that are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions that demonstrate a licensee’s inability to practice medicine competently, safely, or within the bounds of medical ethics, pursuant to Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23.

**22.2(2) Reporting requirement.** A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

*a.* The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

*b.* The report shall contain the name and address of the licensee who may have engaged in the reportable conduct; the date, time, place and circumstances in which the conduct occurred; and a statement explaining how knowledge of the reportable conduct was acquired.

*c.* The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

*d.* A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

*e.* Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

*f.* A licensee shall not be civilly liable as a result of filing a report with the board so long as such report is not made with malice.

**653—22.3(272C) Mandatory reporting—disciplinary action in another jurisdiction.** Each licensee, including a licensee holding an inactive license, shall report to the board every license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction. The report must be filed with the board within 30 days from the date of the action against the physician’s license. Failure to report such disciplinary action in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee.

**653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse.** Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. Knowingly and willfully failing to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule may be grounds for disciplinary action against the licensee.

**653—22.5(272C) Mandatory reporting—hospital disciplinary action.** Each licensee, including a licensee holding an inactive license, shall file with the board a written report describing any disciplinary

action taken by a hospital for reasons relating to the physician's professional competence or conduct which results in a limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's hospital privileges or any voluntary limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's hospital privileges to avoid an investigation or other hospital disciplinary action. A licensee is not required to report a limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's privileges of fewer than 10 days. A licensee is not required to report a voluntary, nondisciplinary limitation or relinquishment of hospital privileges upon the election of the licensee to narrow or change the nature of the licensee's medical practice for reasons not related to competency or conduct. The written report and a copy of the hospital disciplinary action or the licensee's voluntary action must be filed with the board within 30 days of the date of the action. Failure to file the written report and a copy of the action in accordance with the requirements of this rule may constitute a basis for action against the licensee. Reports shall be maintained by the board in accordance with Iowa Code section 272C.6, subsection 4.

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<sup>2</sup> Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.



CHAPTER 23  
GROUNDS FOR DISCIPLINE  
[Prior to 7/19/06, see 653—Chapter 12]

**653—23.1(272C) Grounds for discipline.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

**23.1(1)** Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8 or 272C.10.

**23.1(2)** Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

- a.* Willful or repeated gross malpractice;
- b.* Willful or gross negligence;
- c.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- d.* A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;
- e.* A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;
- f.* A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery or osteopathic medicine and surgery in the state of Iowa;
- g.* Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

**23.1(3)** Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

**23.1(4)** Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148) as interpreted by the board.

**23.1(5)** Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

**23.1(6)** Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

**23.1(7)** Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose includes, but is not limited to:

- a.* Self-prescribing or self-dispensing controlled substances.
- b.* Prescribing or dispensing controlled substances to members of the licensee's immediate family.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the licensee conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes the physician's spouse or domestic partner and either of the physician's, spouse's, or domestic partner's parents, stepparents or grandparents; the physician's natural or adopted children or stepchildren and any child's spouse, domestic partner or children; the siblings of the physician or the physician's spouse or domestic partner and the sibling's spouse or domestic partner; or anyone else living with the physician.

**23.1(8)** Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety. Being adjudged mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

**23.1(9)** Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2) "b."

**23.1(10)** Violation of the laws or rules governing the practice of medicine or acupuncture of this state, another state, the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E or 272C or other state or federal laws or rules governing the practice of medicine.

**23.1(11)** Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

**23.1(12)** Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

**23.1(13)** Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee to submit to evaluation under Iowa Code section 148.6(2) "h" or 272C.9(1).

**23.1(14)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery or osteopathic medicine and surgery or by an acupuncturist.

**23.1(15)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture, medicine and surgery, or osteopathic medicine and surgery in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

**23.1(16)** Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive or untrue representations as to the acupuncturist's or physician's competency to perform professional services for which the licensee is not qualified to perform by education, training or experience.

**23.1(17)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information or intention which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

- a. Inflated or unjustified claims which lead to expectations of favorable results;
- b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty of practice for which the licensee is not qualified;
- c. Representations that are likely to cause the average person to misunderstand; or

*d.* Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

**23.1(18)** Obtaining any fee by fraud or misrepresentation.

**23.1(19)** Acceptance of remuneration for referral of a patient to other health professionals in violation of the law or medical ethics.

**23.1(20)** Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

**23.1(21)** Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture, medicine and surgery, or osteopathic medicine and surgery.

**23.1(22)** Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

**23.1(23)** Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture, medicine and surgery, or osteopathic medicine and surgery entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

**23.1(24)** Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

**23.1(25)** Failure to file the reports required by 653—22.2(272C) within 30 days concerning wrongful acts or omissions committed by another licensee.

**23.1(26)** Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6 and 653—subrule 24.2(6) and rule 653—25.12(17A).

**23.1(27)** Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or drug or alcohol screening.

**23.1(28)** The inappropriate use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

**23.1(29)** Maintaining any presigned prescription which is intended to be completed and issued at a later time.

**23.1(30)** Failure to comply with the recommendations issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the protocols established pursuant to Iowa Code chapter 139A.

**23.1(31)** Failure by a physician with HIV or HBV who practices in a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by a hospital under Iowa Code section 139A.22(1) or to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

**23.1(32)** Failure by a physician with HIV or HBV who practices outside a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

**23.1(33)** Failure by a physician subject to the reporting requirements of 23.1(31) and 23.1(32) to comply with the recommendations of an expert review panel established by the department of public health pursuant to Iowa Code section 139A.22(3), with hospital protocols established pursuant to Iowa Code section 139A.22(1), or with health care facility procedures established pursuant to Iowa Code section 139A.22(2).

**23.1(34)** Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary

proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

**23.1(35)** Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and 653—16.2(261).

**23.1(36)** Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

**23.1(37)** Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

**23.1(38)** Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and 653—24.2(17A,147,148,272C).

**23.1(39)** Failure to comply with the direct billing requirements for anatomic pathology services established in Iowa Code Supplement section 147.106.

**23.1(40)** Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

**23.1(41)** Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

**23.1(42)** Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

**23.1(43)** Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to 2008 Iowa Acts, Senate File 2428, division II, and 653—Chapter 12.

**23.1(44)** Voluntary agreements. The board may take disciplinary action against a physician if that physician has entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

*a.* The board will use the following criteria to determine if a physician has entered into a voluntary agreement within the meaning of Iowa Code section 148.12 and this rule.

(1) The voluntary agreement was signed during or at the conclusion of a disciplinary investigation, or to prevent a matter from proceeding to a disciplinary investigation.

(2) The agreement includes any or all of the following:

1. Education or testing that is beyond the jurisdiction's usual requirement for a license or license renewal.

2. An assignment beyond what is required for license renewal or regular practice, e.g., adoption of a protocol, use of a chaperone, completion of specified continuing education, or completion of a writing assignment.

3. A prohibition or limitation on practice privileges, e.g., a restriction on prescribing or administering controlled substances.

4. Compliance with an educational plan.

5. A requirement that surveys or reviews of patients or patient records be conducted.

6. A practice monitoring requirement.

7. A special notification requirement for a change of address.

8. Payment that is not routinely required of all physicians in that jurisdiction, such as a civil penalty, fine, or reimbursement of any expenses.

9. Any other activity or requirements imposed by the board that are beyond the usual licensure requirements for obtaining, renewing, or reinstating a license in that jurisdiction.

*b.* A certified copy of the voluntary agreement shall be considered prima facie evidence.

**23.1(45)** Performing or attempting to perform any surgical or invasive procedure on the wrong patient or at the wrong anatomical site or performing the wrong surgical procedure on a patient.

**23.1(46)** Violation of the standards of practice for medical directors who delegate and supervise medical aesthetic services performed by nonphysician persons at a medical spa as set out at rule 653—13.8(148,272C).

**23.1(47)** Failure to provide the board, within 14 days of a request by the board as set out at 653—paragraph 13.8(5)“l,” written verification of the education and training of all nonphysician persons who perform medical aesthetic services at a medical spa.

**23.1(48)** Failure to file with the board a written report and a copy of the hospital disciplinary action within 30 days of any hospital disciplinary action or the licensee’s voluntary action to avoid a hospital investigation or hospital disciplinary action, as required by rule 653—22.5(272C).

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

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<sup>2</sup> Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

**VOTER REGISTRATION COMMISSION[821]**

Prior to 3/21/90, Voter Registration Commission[845]

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CHAPTER 7  
VOTER REGISTRATION MAILING ADDRESS MAINTENANCE

**821—7.1(48A) Mailing addresses on voter registration applications.** The voter registration application shall contain a space for a voter to provide a mailing address if it is different from the voter's residential address.

**7.1(1)** *Voter registration application received from registered voter with notice of change to residential address, no new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with an updated residential address and no change to the mailing address, the county registrar shall remove the mailing address on the voter's registration record and mail the registration acknowledgment to the voter's new residential address.

**7.1(2)** *Voter registration application received from registered voter with no change to the residential address, no new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with no change to the residential address and no change to the mailing address, the county registrar shall not change the mailing address on the voter's registration record and mail the registration acknowledgment to the voter's mailing address.

**7.1(3)** *Voter registration application received from registered voter with no change to the residential address, new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with no change to the residential address and a new or updated mailing address, the county registrar shall list the voter's new or updated mailing address on the voter's registration record and mail the registration acknowledgment to the voter's new mailing address.  
[ARC 0539C, IAB 12/26/12, effective 1/30/13]

**821—7.2(48A) Voter registration acknowledgment card returned from mailing address as undeliverable.** If a voter registration acknowledgment card is mailed to the mailing address listed on a voter's registration record and the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the county registrar shall leave the voter's status as active or pending, remove the mailing address from the voter's registration record, and mail another registration acknowledgment to the voter's residential address. If the acknowledgment mailed to the voter's residential address is also returned as undeliverable by the United States Post Office, the voter's registration record shall be made inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1.  
[ARC 0539C, IAB 12/26/12, effective 1/30/13]

**821—7.3(48A) Voter registration list maintenance notice returned from mailing address as undeliverable.** If a voter registration list maintenance notice is sent to the mailing address listed on a voter's registration record and the notice is returned to the county registrar as undeliverable by the United States Post Office, the county registrar shall leave the voter's status as active, inactive or pending, remove the mailing address from the voter's registration record, and send the notice by forwardable mail to the voter's residential address. If the notice sent to the residential address on the voter's registration record is returned as undeliverable by the United States Post Office, the county registrar shall make the voter's status inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1. A voter registration list maintenance notice for purposes of this rule includes any notice sent pursuant to Iowa Code section 48A.27 or 48A.28.  
[ARC 0539C, IAB 12/26/12, effective 1/30/13]

**821—7.4(48A) National change of address (NCOA) match returns new mailing address information for a registered voter.** County registrars that participate in the annual NCOA process shall include mailing address maintenance as part of the voter list review.

**7.4(1)** *NCOA match returns information indicating that the voter's address is a mailing address and the voter has no mailing address currently listed on the voter registration record.* If the NCOA match indicates that an active voter has a mailing address and there is no mailing address currently listed on the voter's registration record, the county registrar shall add the mailing address to the voter's

registration record and mail a voter registration acknowledgment to the voter's new mailing address. If the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the mailing address shall be removed from the voter's registration record, and the voter's status shall remain active.

**7.4(2)** *NCOA match returns information indicating that the voter's address is not a mailing address and the voter has a mailing address listed on the voter registration record.* If the NCOA match indicates that an active voter does not have a mailing address and there is a mailing address currently listed on the voter's registration record, the county registrar shall take the following steps, depending on whether the NCOA match indicates the voter moved within the county of registration or outside the county of registration.

*a. Within-county moves.* The county registrar shall remove the mailing address from the voter's registration record and mail an NCOA card to the voter's residential address. If the NCOA card is returned to the county registrar as undeliverable by the United States Post Office, the mailing address shall be restored on the voter's registration record, and the NCOA card shall be sent by forwardable mail to the voter's mailing address. If the NCOA card sent to the voter's mailing address is returned as undeliverable by the United States Post Office, the voter's status shall be changed to inactive.

*b. Out-of-county or out-of-state moves.* The county registrar shall process the record and make the voter's status inactive as instructed by Iowa Code section 48A.29. The county registrar shall mail an NCOA card to the voter's new out-of-county or out-of-state residential address. If the NCOA card is returned to the county registrar as undeliverable by the United States Post Office, the NCOA card shall be sent by forwardable mail to the voter's mailing address. If the NCOA card sent to the voter's mailing address is returned as undeliverable by the United States Post Office, the voter's status shall remain inactive.

**7.4(3)** *NCOA match returns information indicating that the voter's address is a mailing address that does not match the mailing address currently listed on the voter registration record.* If the NCOA match indicates that an active voter has a mailing address that differs from the mailing address currently listed on the voter's registration record, the county registrar shall update the mailing address and mail a voter registration acknowledgment to the voter's new mailing address. If the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the voter's status shall remain active, the previous mailing address shall be restored on the voter's registration record, and a voter registration acknowledgment shall be mailed to the voter's old mailing address. If the acknowledgment mailed to the voter's old mailing address is also returned to the county registrar as undeliverable by the United States Post Office, the voter's status shall be made inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1.

[ARC 0539C, IAB 12/26/12, effective 1/30/13]

**821—7.5(48A) United States Post Office provides notice of commencement or termination of household mail delivery.** If the United States Post Office provides official notice to the county registrar of commencement or termination of household mail delivery in a particular jurisdiction or area over which the registrar has authority to register voters and maintain the voter registration list, the county registrar may use that official notice to update or remove the mailing addresses on voter registration records affected by the notice. Mailing addresses may be added to or removed from the voter registration records based on the official notice from the United States Post Office. If a mailing address is added to or removed from a voter's registration record pursuant to this rule, a voter registration acknowledgment shall be mailed to the voter at the updated mailing or residential address on file. If the acknowledgment mailed to the updated address is returned as undeliverable by the United States Post Office, the voter's registration status shall remain unchanged, and the voter's registration record shall be restored to remove the update initiated pursuant to this rule.

[ARC 0539C, IAB 12/26/12, effective 1/30/13]

These rules are intended to implement Iowa Code chapter 48A.

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